

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Corey DeRocher d/b/a DeRocher Brothers
Farms**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2014-AFO-11**

**TO: Corey DeRocher
520 Torbert Blvd.
Akron, IA
51001**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Corey DeRocher d/b/a DeRocher Brothers Farms (Mr. DeRocher) and the Iowa Department of Natural Resources (Department). Mr. DeRocher hereby agrees to pay a penalty in the amount of \$2,000.00 and in the future land apply manure in a manner that is compliant with the laws of the State of Iowa.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Cindy Martens
IDNR Field Office #3
1900 N. Grand
Gateway, N. Suite E17
Spencer, Iowa
Ph: 712/262-4177

Legal Issues

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace Building 502 E. 9th St.
Des Moines, Iowa 50319-0034

Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building
502 E. 9th St.
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. Mr. Lammers d/b/a G & J Hauling operates a manure application business. The manure that was involved in the violations which are the subject of this Order originated from Mr. DeRocher's confinement animal feeding operation. This manure was surface applied to ground located in the SE ¼ of Section 21, Westfield Township, Plymouth County, Iowa.
2. Mr. DeRocher operate a 2,400 head wean to finish hog animal feeding operation which is located in the NE ¼ of the SE ¼ section 21 Westfield Township, Plymouth County, Iowa. This property is locally known as 19615 Diamond Ave., Akron, Iowa. Mr. DeRocher hired Mr. Lammers to land apply manure from this animal feeding operation.
3. On September 27, 2013, the Department received a complaint alleging that a manure application too close to a residence in Plymouth County, Iowa was taking place. This residence is owned by Jay Willer, and is located at 16035 200th St, Akron, Iowa. The application was taking place at the above referenced location. The manure was liquid hog manure from Mr. DeRocher's animal feeding operation. This complaint alleged that manure was being surface applied by Mr. Greg Lammers of LeMars, Iowa, Certified Commercial Manure Service Applicator number 8691.
4. On September 27, 2013, following receipt of the complaint, Department staff went to the site to investigate. Upon arriving on site, Department staff confirmed that Mr. Lammers was surface applying manure at a rate of about

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1,000 gallons per acre to alfalfa ground at the location referenced above. The plat book states that the land is owned by Hellen Moffett Trust.

While on site, Department staff investigated the manure pits located at Mr. DeRocher's animal feeding operation. Department staff observed that the pits were very full and called Mr. DeRocher to discuss the matter. Mr. DeRocher stated that he had failed to remove enough manure last spring and needed to get some out now, but the rest would be injected onto other fields at a later date.

Department staff observed that the surface application was taking place within a foot of the field boundaries to the east and to the south. Photos were taken which document this observation. Measurements indicated that the application was within 115 feet of the Willer residence which is located to the east and within 435 feet of the Johnston residence which is located to the south. The 200 foot separation distance to the creek was being maintained. Department staff informed Mr. Lammers that Iowa law required that a 750 separation distance from a residence be maintained when surface applying liquid manure. Following receipt of this information, Mr. Lammers started applying the manure towards the center of the field, to maintain the correct separation distance.

5. Following the on-site investigation, Department staff reviewed the Manure Management Plan (MMP) for Mr. DeRocher's animal feeding operation and discovered that the land to which manure was land applied by Mr. Lammers was not included in the MMP. Department staff called Mr. DeRocher and inquired as to whether any updates to his MMP had been made. Mr. DeRocher stated that Jeff Koops was his MMP preparer and would have that information. Department staff then contacted Mr. Koops who stated that no MMP updates had been made by Mr. DeRocher and that the above referenced alfalfa field was not included in Mr. DeRocher's MMP.

6. On October 7, 2013, the Department mailed a Notice of Violation to Mr. Lammers and Mr. DeRocher for the above discussed violations. This letter also informed the parties that the matter was being referred to the Department's Legal Services Bureau for an enforcement action which would include a monetary penalty.

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IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.173 authorizes the Environmental Protection Commission (Commission) to adopt rules establishing water quality and discharge standards relating to the operation and construction of animal feeding operations and the conditions under which the Department shall issue permits to such operations, and relating to the disposal of manure resulting from animal feeding operations. The Commission has done so at 567 IAC Chapters 60-65. Chapter 65, in particular, relates to animal feeding operations.

2. Iowa Code section 459.103 requires the Commission to adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has done so at 567 IAC Chapter 65.

3. 567 IAC 65.3(3), requires

Separation distance requirements for land application of manure. Land application of manure shall be separated from objects and locations as specified in this subrule.

a. For liquid manure from a confinement feeding operation, the required separation distance from a residence not owned by the titleholder of the land, a business, a church, a school, or a public use area is 750 feet The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school, or public use area.

b. The separation distance specified in paragraph 65.3(3)"a" shall not apply if any of the following apply:

(1) The liquid manure is injected into the soil or incorporated within the soil not later than 24 hours after the original application.

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(2) The titleholder of the land benefitting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

(3) The liquid manure originates from a small animal feeding operation.

(4) The liquid manure is applied by low-pressure spray irrigation equipment pursuant to paragraph 65.3(3)"d."

The above stated facts show noncompliance with this provision.

4. 567 IAC 65.17(3) requires the following:

Confinement feeding operations that will not sell all of their manure shall submit the following for that portion of the manure which will not be sold:

* * *

c. The planned crop schedule and optimum crop yields.

d. Manure application methods and timing of the application.

e. The location of manure application.

Because the land upon which manure was land applied was not included in Mr. DeRocher's MMP the above stated facts show noncompliance with this provision.

5. 567 IAC 65.17(8) requires the following

Location of manure application.

a. The manure management plan shall identify each farm where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.

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b. A copy of each written agreement executed with the owner of the land where manure will be applied shall be maintained with the current manure management plan. The written agreement shall indicate the acres on which manure from the confinement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation. ...

c. If a present location becomes unavailable for manure application, additional land for manure application shall be identified in the current manure management plan prior to the next manure application period.

The above stated facts show noncompliance with this provision.

V. ORDER

THEREFORE, the Department hereby orders and Mr. DeRocher consents to do the following:

1. In the future Mr. DeRocher shall comply with all MMP requirements when land applying manure;
2. In the future Mr. DeRocher shall review manure separation distances prior to land applying manure;
3. In the future Mr. DeRocher shall timely update his MMP; and
4. Mr. DeRocher shall pay a penalty in the amount of \$2,000.00 within 30 days of the date the Director of the Department signs this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided.

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2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

a. Economic Benefit. Mr. DeRocher saved time and money by not ensuring that the manure from his animal feeding operation was land applied in a manner consistent with the laws of the State of Iowa. Specifically money was saved by not taking the time to comply with mandatory separation distances and by failing to ensure that the land upon which the manure was land applied to was included in his MMP. For that reason, \$1,000.00 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves multiple violations of rules, statutory provisions and permit conditions. These regulations are the backbone of the animal feeding operation program and are designed to protect the environment. Such violations threaten the integrity of this program. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the above-cited violations. However, the Department has decided to handle this matter administratively, therefore, \$500.00 is assessed for this factor.

c. Culpability. Land application of manure is an activity that poses a substantial environmental threat and therefore, demands the highest level of care. The land application of manure which is the subject of this Order occurred in violation of multiple rule, statutory and permit conditions. This shows a complete disregard for the laws of the State of Iowa and that the appropriate standard of care was not applied. Therefore, \$ 500.00 is assessed for culpability.


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VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Mr. DeRocher. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


Corey DeRocher d/b/a DeRocher Brothers Farms

Dated this 3RD day of
April, 2014.


Chuck Gipp DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES.

Dated this 15th day of
April, 2014.

EPA, Field Office 3, Carrie Schoenebaum; Cindy Martens, VIII B. 4, C. 2, D. 2 (b).